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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,233	02/05/2004	Richard D. Stackenwalt	0212	6240

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ARMSTRONG WORLD INDUSTRIES, INC.  
LEGAL DEPARTMENT  
P. O. BOX 3001  
LANCASTER, PA 17604-3001

EXAMINER
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GILBERT, WILLIAM V

ART UNIT	PAPER NUMBER
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3635

MAIL DATE	DELIVERY MODE
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05/29/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/774,233	<b>Applicant(s)</b> STACKENWALT ET AL.	
	<b>Examiner</b> William V. Gilbert	<b>Art Unit</b> 3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

This is a First Action on the Merits. Claims 1-25 are pending below.

***Election/Restrictions***

1. Applicant's election without traverse of Species I and V in the reply filed on 26 April 2007 is acknowledged. The examined claims are 1-25.

***Priority***

2. It is noted that this application appears to claim subject matter disclosed in prior Application No. PCT/US02/22945, filed 19 July 2002. The Examiner noted that according to the records, the present application was previously numbered **10/486942**. Please amend the specification to note this change. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If

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the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or

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119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

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***Claim Objections***

3. The claims are objected to because of the following informalities: possible confusion between the limitation "a clip" per e.g. Claim 1, line 2 and "an intersection clip", per e.g. Claim 9, line 1. Later references to "said clip" (e.g. Claim 13, line 1), are confusing as to which clip is being limited, though Examiner assumed "said clip" refers to "a clip" as provided in Claim 1. Examiner suggests changing "a clip" as in Claim 1 to --a first clip--, or the like, to further clarify which clip and make references to the antecedent as such. Appropriate correction is required.

**Claims 2, 12, 17, 21** objected to because of the following informalities: use of the word *convolute* in reference to the clip. The accepted definition for *convolute* is "twist or coil" (*Merriam-Webster's Collegiate Dictionary*, Tenth ed. 1999.) The drawings referencing the clip are neither twisted nor coiled as best understood by the Examiner. Appropriate correction is required.

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***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 and 2** are rejected under 35 U.S.C. 102(b) as being anticipated by Paul (U.S. Patent No. 4,866,904).

Claim 1: Paul discloses a decorative structure (Fig. 11) having a panel (18) with a first and second face (28, 30) a support structure (Fig 13: 20, 22) aligned adjacent the second face, and a clip (Fig. 11: 10) fastening the structure to the panel and extending along a portion of the first portion of the first face of the panel.

Claim 2: the clip has a convolute (as best understood by the Examiner in light of the specification) retainer (14a, b and c) where a portion of the retainer extends along a portion of the first face.

**Claims 15 and 25** are rejected under 35 U.S.C. 102(b) as being anticipated by Jahn (3,292,332).

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Claim 15: Jahn discloses a decorative structure comprising a panel (Col. 1, lines 18-20) and a support structure (Fig. 1) connected to the panel, the support structure having a first member (4) having a keyed aperture (12), a first cross member (1b) disposed in the keyed aperture, and an intersection clip (17) engaging the first member and first cross member.

Claim 25: the first cross member (1b) is connected to a second cross member (1c) disposed in the keyed aperture.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.



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3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over Paul in view of Deaton (U.S. Patent No. 4,471,596).

Claim 3: Paul discloses the claimed invention except that the panel is in a flexed configuration. Deaton discloses a panel system (11) where the panel (94) is maintained in a flexed configuration. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the panel system in Paul in a flexed position because it is well known in the art to make such panel systems with curves and flexures for aesthetic purposes.

**Claims 4, 6, 7 and 9-14** rejected under 35 U.S.C. 103(a) as being unpatentable over Paul in view of Jahn.

Claim 4: Paul discloses the claimed invention in including a support structure, but Paul does not disclose the particulars of the support structure. Jahn discloses a decorative structure with a first member (Fig. 1: 4) having a keyed aperture (12). It would have been obvious at the time the invention was made to

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a person having ordinary skill in the art to make the support structure in Paul with the aperture as in Jahn in order to connect the structural frame portion together.

Claim 6: Paul in view of Jahn discloses a first cross member (Jahn 1b) disposed in the keyed aperture.

Claim 7: Paul in view of Jahn discloses a second cross member (Jahn 1c) disposed in the aperture and interconnected to the first cross member.

Claim 9: Paul in view of Jahn discloses an intersection clip (Jahn 17) engaging the first member, first cross member and second cross member.

Claim 10: Paul in view of Jahn discloses intersecting members (Jahn 1b, 1c) and an intersection clip (17) maintaining the members in position.

Claim 11: the intersection clip comprises two achiral halves (the intersecting clip is achiral if divided at the points noted by 19).

Claim 12: the intersection clip (Jahn 17) comprises a convolute (as best understood in light of the Specification) saddle member (proximate 17).

Claim 13: Paul in view of Jahn discloses a major leg (portion between 18 and 19) engaging the support structure.

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Claim 14: Paul in view of Jahn discloses a minor leg (Jahn portion from 15-19) engaging said support structure.

**Claims 5 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul in view of Jahn and Deaton.

Claims 5 and 8: Paul in view of Jahn discloses the claimed invention except that the structural members of the structure are curved. Deaton discloses a decorative structure where the members (82) are curved. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the structural member in Paul in view of Jahn curved because it is well known in the art to make such panel systems with curves in the structural portion for aesthetic purposes.

**Claims 16-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Jahn in view of Paul.

Claim 16: Jahn discloses the claimed invention except that the support structure is connected to the panel by a clip. Paul discloses a panel system where the panel is connected to the support structure by a clip (Fig. 11). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use a clip to connect the panel in

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Jahn to the support structure in order to properly secure the panel to the structure.

Claim 17: Jahn in view of Paul disclose a convolute (as best understood by the Examiner) retainer (Paul 10) extending along a face (28) of the panel.

Claim 18: Jahn in view of Paul disclose the clip (Paul 10) has a major leg (16a) engaging the support structure (see Fig. 11, generally).

Claim 19: the clip has a minor leg (60c) engaging the support structure.

Claim 20: Jahn in view of Paul disclose the intersection clip comprises two achiral halves (the intersecting clip is achiral if divided at the points noted by 19).

Claim 21: the intersection clip (Jahn 17) comprises a saddle member (proximate 17).

**Claims 22-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Jahn in view of Deaton.

Claim 22: Jahn discloses the claimed invention except that the panel is in a flexed configuration. Deaton discloses a panel system (Fig. 11) where the panel (94) is maintained in a flexed configuration. It would have been obvious at the time the invention was made to a person having ordinary skill in the art

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to make the panel system in Jahn in a flexed position because it is well known in the art to make such panel systems with curves and flexures for aesthetic purposes.

Claims 23 and 24: Jahn discloses the claimed invention except for curved structural members. Deaton discloses a system having curved members and cross members (82). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the structural members Jahn curved because it is well known in the art to make such panel systems with curves in the structural portion for aesthetic purposes.

### **Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fletterick (U.S. Patent No. 6,374,564); Astedt (U.S. Patent No. 3,834,106); Cherniak (U.S. Patent No. 3,630,554).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be

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reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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5/23/07